IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-277980-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Jared T. BROWN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1882

Jared T. BROWN

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 22 July 1969, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman's documents for three months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as an oiler on board SS TRANSCHAMPLAIN under authority of document captioned, Appellant:

(1) on or about 31 October, and 1 and 2 November 1968, at Subic Bay, Phillippine Republic, was absent from the vessel without authority; and

(2) on or about 31 January 1969, abandoned his engine room watch at Acapulco, Mexico.

At the hearing, Appellant did not appear. No plea was entered to the charge or either specification.

The Investigating Officer introduced in evidence voyage records of TRANSCHAMPLAIN.

There was, of course, no defense.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant, for a period of three months.

The entire decision was served on 1 August 1969.

Appeal was timely filed.

FINDINGS OF FACT

Because of the disposition to be made of this case, no findings of fact are required except that the jurisdictional allegations were established.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the order is too severe.

APPEARANCE: Appellant, pro se.

OPINION

I

As I have noted in the prefatory statement, no plea was entered in this proceeding. The Examiner's decision recounts that a "not guilty" plea was entered, but such was not the case. The verbatim transcript clearly establishes this fact.

46 CFR 137.20-75(b) directs that an in absentia proceeding, the examiner shall enter a pleas of "not guilty" to all charges and specifications.

This error I do not consider to be fatal, as long as the entire record reflects that proceedings were conducted as if the proper pleas has been entered, but there was procedural error.

II

The official log entries relied on in this case are somewhat questionable. I do not choose here to explore or try to resolve the questions; I merely mention them as persuasive to the action to be taken in this case.

III

Decision on Appeal No. 1472 dealt with an error in reception of evidence of prior record. 46 CFR 137.20-160(a) makes it clear that an examiner may not have access to a seaman's prior record before he made findings on the merits on all charges and specifications pending in the case before him.

In No. 1472 the error was offensive to the Appellant, who had been present with counsel at the hearing, because he had desired to present evidence favorable to his position and had been denied the opportunity to do so by the Examiner's informal ascertainment of the record after he had made his findings. The error was cured by a remand and reopening. The result was that Appellant's evidence presented in open hearing persuaded the Examiner to reduce the severity of his order.

In in absentia cases, the party has waived his right to hear and contest the prior in open hearing. While it is extremely desirable that even in in absentia cases an examiner make his findings on the record in open hearing and receive the evidence of prior record on the record after findings, in such cases when the examiner has found good cause to postpone making his findings and publishes them in writing rather than announcing them in open public hearing it has thus far been found acceptable that the examiner state in his decision that he ascertained the prior record after findings had been made.

The record here clearly reflects that the Investigating Officer offered and the Examiner received evidence of Appellant's having been on probation at the time of the alleged offenses in the instant case before any finding has been made with regard to this second specification.

This error cannot be corrected by a remand to the Examiner who heard the case. It could never be said that his evaluation of the problems of the log book entire had not possibly been influenced by his knowledge of Appellant's prior record, thus leading to a finding that the charge and specification were proved. A hearing de novo before another examiner would be required, necessitating preparation and service of new charges on Appellant with notice and opportunity to be heard.

Since the offenses in the instant case were considered so trivial by both the Investigating Officer and the Examiner that they merited no order, even on probation, or even a separate admonition, and were obviously charged and handled only for the purpose of proving that a violation of probation had occurred, the time and effort for a de novo hearing would not be well spent.

CONCLUSION

I conclude that dismissal of the charges is appropriate.

ORDER

The order of the Examiner dated at San Francisco, California,On July 22, 1969, is VACATED. The findings are SET ASIDE, and the charges are DISMISSED.

C.R. BENDER
ADMIRAL, U.S. COAST GUARD
COMMANDANT

Signed at Washington, D.C., this 26th day of June 1972.

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